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TITLE 16. DEPARTMENT OF TRANSPORTATION  
CHAPTER 41. HIGHWAY OCCUPANCY PERMITS

Expires August 25, 2015

SUBCHAPTER 1. PURPOSE AND SCOPE

16:41-1.1 Purpose and scope

The purpose of this chapter is to provide the procedures, standards, and conditions for the issuance of highway occupancy permits by the Department. Highway occupancy permits are required when any activity is undertaken over, under, or within any portion of State highway right-of-way or property under the jurisdiction of the Department. Additionally, a highway occupancy permit is required for any activity which may interfere with the free and safe movement of normal highway traffic on a State highway or when any activity will affect any portion of State highway right-of-way or property under the jurisdiction of the Department. This chapter does not apply to Charitable Solicitation Permits as these permits are covered under N.J.A.C. 16:40, Charitable Solicitation on Roadways. This chapter does not apply to highway access permits, which are addressed in N.J.A.C. 16:47, State Highway Access Management Code, or to activities concerning the operation, erection, placement or maintenance of news dispenser boxes within State highway rights-of-way or property under the jurisdiction of the Department which are subject to the provisions of N.J.A.C. 16:41B, Newspaper Boxes on State Highway Right-Of-Way.

16:41-1.2 Requests for permits

(a) Applicants shall direct requests for permits, except for wireless communications site survey permits, to the Regional Maintenance Office in the region in which the majority of the activity is to take place. The map at the chapter Appendix, incorporated herein by reference, shows the boundaries of each region. The addresses and telephone numbers of the Regional Maintenance Offices are:

1. For the Northern Region:

New Jersey Department of Transportation  
200 Stierli Court  
Mount Arlington, NJ 07856-1322  
(973) 770-5140  
(609) 588-6211 (Emergency only)

2. For the Central Region:

New Jersey Department of Transportation  
100 Daniels Way  
Freehold, NJ 07728-2670  
(732) 625-4330  
(609)-588-6212 (Emergency only)

3. For the Southern Region:

New Jersey Department of Transportation  
1 Executive Campus  
Cherry Hill, NJ 08002-4123  
(856) 486-6688  
(609) 588-6213 (Emergency only)

(b) Applicants shall direct requests for wireless communications site survey permits to the following address:

Wireless Communications Unit  
New Jersey Department of Transportation  
1035 Parkway Avenue  
PO Box 600  
Trenton, NJ 08625-0600  
(609) 530-3875

(c) Applicants shall direct requests for field markouts of fiber optic cables or conduit facilities to the Department's website or Traffic Operations Centers listed below:

1. <http://www.state.nj.us/transportation/eng/elec/ITS/markout.shtm>.

2. Traffic Operations North (Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Sussex, Somerset, Union and Warren counties):

New Jersey Department of Transportation  
670 River Drive  
Elmwood Park, NJ 07407  
(201) 797-3676

3. Traffic Operations South (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean and Salem counties):

New Jersey Department of Transportation  
One Executive Campus  
Route 70 at Cuthbert Road  
Cherry Hill, NJ 08002  
(856) 486-6610

4. For emergency markouts Statewide call (609) 588-6212.

(d) Applicants wishing to undertake more than one activity shall make one application for a single permit for the combination of activities.

(e) A person performing any activity within any portion of State highway rights-of-way or property under the jurisdiction of the Department that does not require a new permit shall notify the Regional Maintenance Office of the region in which the majority of the activity is to take place.

16:41-1.3 Department functions for wireless communications site survey permits

(a) The Wireless Communications Unit for wireless communications site survey permits shall perform those functions this chapter designates for performance by a Regional Maintenance Office for highway occupancy permits.

(b) The supervisor of the Wireless Communications Unit for wireless communications site survey permits shall perform the functions this chapter designates for performance by a Regional Maintenance Engineer for highway occupancy permits.

## SUBCHAPTER 2. DEFINITIONS

### 16:41-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Access permit" means a permit issued pursuant to N.J.A.C. 16:47, as amended and supplemented.

"Application" means a document submitted to the Department to initiate the permit process.

"Applicant" means a private party or entity, municipality, county, or any public agency applying for a permit.

"Banner" means a strip of material without rigid support that is painted or printed with text or graphics.

"Carrier" means a wireless communications company licensed by the Federal Communications Commission to operate in New Jersey.

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such persons as the Commissioner may designate.

"Complete application" means an application satisfying Department form and content requirements set forth in this chapter, thereby making it acceptable for Department review.

"Day" means calendar day, unless otherwise specified.

"Decorations" means an ornament, other than a banner.

"Department" means the New Jersey Department of Transportation.

"Design standards" means standards for design based on one or more of the following:

1. "New Jersey Department of Transportation Roadway Design Manual," 2001, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering Documents Unit at 609-530-5587 or on the Department's website at: <http://www.state.nj.us/transportation/eng/documents/RDME/>.

2. "New Jersey Department of Transportation Bridges and Structures Design Manual," 4th edition, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering Documents Unit at 609-530-5587 or on the Department's website at: <http://www.state.nj.us/transportation/eng/documents/BDME/>.

3. "A Policy on Design Standards--Interstate System," 2005 edition, or superceding editions, incorporated herein by reference, available from the American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol St., NW, Washington, DC 20001, or on the AASHTO website at: <https://bookstore.transportation.org/>.

4. "Standard Electrical Details," July 2001, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering

Documents Unit at 609-530-5587 or on the Department's website at:  
<http://www.state.nj.us/transportation/eng/elec/TSS/CADD/eElectricalDetails.shtm>.

5. "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD), 2003 edition, Rev. 1 and 2, as amended and supplemented, or superceding editions, incorporated herein by reference. The MUTCD is available on the Federal Highway Administration website at: <http://mutcd.fhwa.dot.gov/> or on the AASHTO website at: <https://bookstore.transportation.org/>.

6. "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," 2007 edition, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering Documents Unit at 609-530-5587 or on the Department's website at:  
<http://www.state.nj.us/transportation/eng/specs/2007/Division.shtml>.

7. "A Policy on Geometric Design of Highways and Streets," 5th edition, or superceding editions, as amended and supplemented, incorporated herein by reference, available from the American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol St., NW, Washington, DC 20001, or on the AASHTO website at:  
<https://bookstore.transportation.org/>.

8. N.J.A.C. 16:25, Utility accommodation, as amended and supplemented.

9. "New Jersey Department of Transportation Sample Plans," 2001, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering Documents Unit at 609-530-5587 or on the Department's website at: <http://www.state.nj.us/transportation/eng/CADD/E/pdf/SamplePlansEnglish.pdf>.

10. "New Jersey Department of Transportation Standard Roadway Construction/Traffic Control/Bridge Construction Details," 2001, as amended and supplemented, or superceding editions, incorporated herein by reference, available from the Department's Engineering Documents Unit at 609-530-5587 or on the Department's website at:  
<http://www.state.nj.us/transportation/eng/CADD/E/index.shtml#StandardDetailsEnglish>.

"Expiration" means the formal termination of a permit.

"Extended lot line" means a line, radial or perpendicular to the highway centerline, at each end of the frontage, extending from the right-of-way line to the curblin.

"Freeway" means a multi-lane, divided highway having a minimum of two lanes in each direction and limited access.

"Highway" means a public right-of-way, whether open or improved or not, including all existing factors of improvements.

"Highway occupancy permit" or "permit" means any permit issued under this chapter.

"Maintenance" means continuous work required to hold component factors covered by a permit against deterioration due to wear and tear and thus to preserve the general character of the original component factors without alteration.

"Private utility" means a utility owned and operated by private citizens or concerns.

"Public utility" shall have the meaning established at N.J.S.A. 48:2-13, as amended and supplemented, incorporated herein by reference, and N.J.S.A. 48:5A-1 et seq., as amended and supplemented, incorporated herein by reference.

"Repair" means limited or minor replacement of one or more component factors covered by a permit that may be required because of storm or other cause to restore a condition requiring only maintenance.

"Rights-of-way" means State highway property and property rights, including easements, owned and controlled by the Department.

"Right-of-way line" means the outer edge of State highway property, separating highway property from the abutting lots owned by others.

"Shoulder" means the portion of the roadway that lies between the edge of the traveled way and curblines, excluding auxiliary lanes.

"Sidewalk area" means that portion of the right-of-way that lies between the curblines and right-of-way line, regardless of whether a sidewalk exists.

"State highway" means a road owned, taken over, controlled, built, or maintained by the Department.

"State highway system" means the network of State highways.

"Streetscape improvement" means a project contained within or along state highway rights-of-way or property under the jurisdiction of the Department that combines various activities covered by more than one category of highway occupancy permits, including, but not limited to, crosswalks, sidewalks, curbs, landscaping, drainage enhancements, benches, street furnishings, lighting, and traffic calming measures. The predominant activity being performed as a streetscape improvement will be the category for which the permit application is made, with the other activities also indicated on the application.

"Traveled way" means the portion of the roadway provided for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Utility" means a privately, publicly or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public.

"Waiver" means the Department's intentional relinquishment of its right to wholly enforce provisions of this chapter. Waivers may either reduce or eliminate requirements.

### SUBCHAPTER 3. GENERAL PROVISIONS

#### 16:41-3.1 General restrictions

(a) The Department shall not assume any cost involved in the activities authorized by a highway occupancy permit, unless the permittee is under contract to the Department and working on Department rights-of-way or property under the jurisdiction of the Department at the written request of the Department.

(b) No person shall use any part of State highway rights-of-way or property under the jurisdiction of the Department for any private purpose or uses associated with private purposes. The sidewalk area shall be kept clear of buildings, sales exhibits, signs, parking areas, service equipment, vehicles, and appurtenances.

(c) No person shall erect advertising signs or devices on or overhanging State highway rights-of-way or property under the jurisdiction of the Department. No person shall use State highway rights-of-way or property under the jurisdiction of the Department for the display of merchandise. The Department shall not authorize the erection and maintenance on public property of signs other than those that regulate, direct, or warn, or as otherwise allowed by State law.

(d) No person shall place, maintain, or display upon or in view of any State highway, any unauthorized traffic sign, device, or other contrivance, that purports to be or is an imitation of, or of such a nature as to be mistaken for, an official traffic sign, that attempts to direct the movement of traffic, or that hides from view or interferes with the effectiveness of any official sign. No public authority shall permit any traffic sign, or any traffic signal bearing thereon or on its support, any commercial advertising on a State highway.

(e) A permittee, in the conduct of activity authorized by a permit, shall conduct the activity in a manner that does not interfere with any Department structure or facility, on, over, or under the State highway, or with any concurrent activity being done as part of a highway improvement project, unless the permit authorizes the interference.

(f) When a permittee is to fill a lot adjacent to the highway to the highway grade, the Department may require the permittee to make provision, at the permittee's own expense, for disposition of highway drainage by installing pipes of adequate size and material, inlets, catch basins, manholes, headwalls, and ditches as may be necessary to protect the Department's drainage rights. The permittee shall avoid interference with drainage installations and shall not disturb the existing cross-section and drainage of highways. The permittee shall not interrupt the longitudinal flow of water along the curbline, and shall make adequate provision for all transverse, lateral, and longitudinal drainage affected by the permittee's construction.

(g) The Department shall not permit openings in newly constructed or resurfaced State highways for a period of five years after the construction or resurfacing, without the consent of the Commissioner, as documented in a waiver pursuant to N.J.S.A. 27:7-26 and N.J.A.C. 16:41-8.

(h) The Department shall not authorize activity within the limits of State highway rights-of-way or property under the jurisdiction of the Department that would adversely affect the stability, appearance, or designed function of the State highway itself or of its component or auxiliary structures.

(i) The permittee shall locate all lighting, sprinklers, heaters, landscape ties, and other equipment for roadside establishments off State highway rights-of-way or property under the jurisdiction of the Department. The Department shall not be responsible for maintenance or replacement of any such appurtenances within State highway rights-of-way or property under the jurisdiction of the Department.

#### 16:41-3.2 Inspection, material, and workmanship

(a) Activity within State highway rights-of-way or property under the jurisdiction of the Department is subject to inspection and approval by the Department. Construction, as far as is practicable, shall conform in quality and appearance to similar Department construction. Material shall conform to the Department's "Standard Specifications for Road and Bridge Construction", 2007 edition, and any updates or superceding editions, unless otherwise specified in the permit. If the Department's inspector determines that the permittee is providing insufficient traffic protection or that some other deficiency exists, the Department's inspector shall prohibit the permittee from conducting further activity until the permittee corrects the deficiency.

(b) Pursuant to N.J.A.C. 16:41-6.6, the Department may assign an inspector whose time and expenses shall be charged to the permittee, when any of the following occur:

1. Activities outside of 8:00 A.M. to 4:30 P.M., Monday through Friday, not including authorized State holidays;
2. Activities on authorized State holidays;

3. Activities requiring full-time monitoring by a resident engineer;
  4. Activities requiring monitoring by an inspector for more than two hours per day; or
  5. Activities relating to extraordinary or unforeseen conditions.
- (c) The cost of construction work and material shall be entirely at the permittee's expense.

## SUBCHAPTER 4. STANDARDS

### 16:41-4.1 Standards

(a) All activity performed within State highway rights-of-way or property under the jurisdiction of the Department and all signs, markings or other traffic control devices used by the permittee shall be in compliance with the design standards defined at N.J.A.C. 16:41-2.1, unless otherwise specified in the permit.

(b) When performing activity within State highway rights-of-way or property under the jurisdiction of the Department, the permittee shall be responsible for the following:

1. Having all required approved traffic control signs and devices on site before the actual start of the activity;
2. Placing and maintaining, within State highway rights-of-way or property under the jurisdiction of the Department, all approved traffic control signs and devices during the activity period and removing same upon completion of the activity;
3. Maintaining the uninterrupted flow of traffic at all times, unless otherwise specified in the permit;
4. Not storing material and parking equipment on State highway rights-of-way or property under the jurisdiction of the Department except while the activity is underway, unless otherwise specified in the permit;
5. Using traffic directors at every location when the permittee's equipment is entering, leaving, or crossing active traffic lanes, unless otherwise specified in the permit;
6. Providing and installing temporary removable pavement marking tape to effect temporary changes in pavement markings, removing permanent markings that are inappropriate or misleading, and, upon completion of the work, restoring all pavement markings to their original configuration, or as indicated in the permit;
7. Restoring all portions of the work area to accommodate traffic during non-work hours, and ensuring that all excavations or drop offs greater than two inches (50 millimeters) are eliminated, covered, protected or delineated; and
8. Immediately notifying the appropriate Regional Maintenance Office, at the telephone number specified in N.J.A.C. 16:41-1.2(a), of any threat to public health, safety, or welfare.

## SUBCHAPTER 5. PERMIT APPLICATIONS

### 16:41-5.1 Submission of permit applications

(a) Applications for highway occupancy permits are available from the Department's Regional Maintenance Offices or the Department's website at:

[www.state.nj.us/transportation/eng/forms](http://www.state.nj.us/transportation/eng/forms). Multiple activities, such as construction of streetscape improvements, may be included on one application. Whenever the activities restrict the available pavement width or alter the normal traffic patterns, a request to close the lane or shoulder shall be included on the application. Based upon the predominant activity being performed, the following application forms shall be used:

<u>Predominant Activity</u>	<u>Application</u>
Utility opening	Form MT-17A
Erection of pole	Form MT-33A
Drainage facilities	Form MT-39A
Bridge attachment	Form MT-105A
Highway occupancy	Form MT-120A

(b) Permit applicants shall provide duplicate copies of the following information to the appropriate Regional Maintenance Office:

1. For a highway occupancy permit for activities other than those listed in (b)2 through 5 below, the applicant's name, mailing address, and telephone number; the name of the entity on whose behalf the applicant makes the application; the type of permit for which the applicant makes the application; the State highway number, municipality, county, exact location, direction, and reference point such as a street, stream, or milepost, at which the proposed activity is to be undertaken; and a description of the project the applicant proposes to undertake;

2. For a bridge attachment permit, the entity for whom application is being made, the agent making the application, the telephone number and mailing address of the agent; the location of the attachment as being on or over the bridge; the route number, municipality, county, location with reference to intersection, and distinct landmark such as a road, river, or stream, at which the proposed activity is to be undertaken; and the purpose of the activity;

3. For a utility opening permit, the applicant's name, mailing address, and telephone number; the State highway number, municipality, county, location with reference to intersection, and distinct landmark such as a road, river, or stream, and nearest street, at which the proposed opening is to be undertaken; the width, length, and square footage of the opening; and the work commencement and completion date, and when applicable, the bond date and agreement date;

4. For a drainage facility construction permit, the applicant's name, mailing address, and telephone number; the State highway number, side, municipality, county, location with reference to intersection, and distinct landmark such as a road, river, or stream, and nearest street, at which the proposed drainage facility construction opening is to be undertaken; and the purpose of the proposed drainage facility construction; and

5. For a pole erection permit, the applicant's name, being a utility company, mailing address and telephone number, the bond and agreement dates; the number of poles to be erected or relocated; the maximum voltage; the completion date; the State highway number, municipality, county, and location in relation to an intersecting street, stream or landmark at which the pole erection is to be made; and the general purpose of the work.

(c) The Regional Maintenance Office shall determine if permits are necessary, confirm that the applicant has applied for the proper types of permits, coordinate the review with other Department offices, and, if appropriate, issue letters confirming that permits are not needed.

(d) The Department shall not consider an application to have been submitted, and shall not begin processing a permit application, until the applicant has submitted the proper application fee.

(e) The entities listed in the table below or a representative thereof holding a completed power of attorney form (MT-156, available from the Department's Regional Maintenance Offices or the Department's website at: [www.state.nj.us/transportation/business/accessmgt/](http://www.state.nj.us/transportation/business/accessmgt/)), are the only entities eligible to sign permit applications. The applicant shall submit the completed MT-156 with the application when those listed do not sign the application. If the signatory is signing in other than an individual capacity, the applicant shall submit with the application a copy of an appropriate resolution authorizing the individual to sign on behalf of the applicant.

<u>Type of permit application</u>	<u>Application signed by:</u>
Utility openings	Utility*
Poles	Utility
Curb, sidewalk or handicapped ramps	Abutting owner or local authority
Drainage facilities	Applicant
Landscaping, tree trimming, vegetation control, or unclassified landscaping	Abutting owner or local authority
Bridge attachments	Applicant
Pedestrian overpass or underpass	Applicant
Grading	Abutting owner or local authority
Guiderail	Applicant
Test holes or borings	Applicant
Monitoring wells	Applicant
Crosswalks	Local Authority
Telephones	Applicant
Bus shelters or benches	Registered motor carrier or local authority
Banners, decorations, or temporary announcements or guide signs	Applicant
Parades or gatherings	Applicant
Temporary use	Applicant
Detours off State highways or vice versa	Applicant
Lane or shoulder closings on State highways	Applicant
Automatic traffic counting procedures	Applicant
Wireless communications site surveys	Carrier
Railroad grade crossings	Railroad or its designated contractor
Miscellaneous	Applicant

\*For longitudinal underground fiber optic installations, a public utility shall sign the application.

(f) Applications shall reflect conditions that exist at the time the application is submitted to the Department and include all State, county, municipal, or private projects that have been advertised for construction or awarded, as appropriate.

(g) The application shall identify all State highways by route number and shall identify direction of travel based on the general orientation of the State highway, as designated by the Department. These directions may differ from the orientation of the particular State highway segment.

(h) The Department may require supporting documents as part of the application as identified in N.J.A.C. 16:41-5.6(b).

## 16:41-5.2 Permit application categories

(a) Following is a list and an accompanying description of the different categories of permit applications:

1. Utility openings, which are for trenchless or open excavations for the purpose of constructing, maintaining (if no traffic interruption is involved), or installing subsurface utilities such as sewer lines, water lines, gas lines, fiber optic lines, telecommunication or electric conduits, or service connections within any portion of State highway rights-of-way or property under the jurisdiction of the Department.
2. Poles, which are for the erection, relocation, or replacement of poles, appurtenances, or other pole attachments located within any portion of State highway rights-of-way or property under the jurisdiction of the Department. Appurtenances shall include cable or guy anchors, and low mounted transformer supports. Pole attachments include, but are not limited to, call boxes, climbing rungs, transmission lines, cross arms, and transformers.
3. Curb, sidewalk or handicapped ramps, which are for the construction, repair, or replacement of curb, sidewalks, or handicapped ramps within any portion of State highway rights-of-way or property under the jurisdiction of the Department.
4. Drainage facilities, which are for connecting to any Department drainage structure or installing drainage facilities within any portion of State highway rights-of-way or property under the jurisdiction of the Department, including any drainage work that impacts such rights-of-way or property. This includes construction or modification of inlets, manholes, headwalls, and other appurtenances, and any temporary connections to Department drainage facilities. If drainage activity is included in a highway access permit issued by the Department's Access Management Bureau, a separate drainage facilities highway occupancy permit shall not be required.
5. Landscaping, tree trimming, vegetation control, or unclassified landscaping, which are for planting, trimming or removing trees, shrubbery, vegetation and other forms of landscaping on State highway rights-of-way or property under the jurisdiction of the Department.
6. Bridge attachments, which are for installing, laying, or connecting pipes, conduits, wires, cables, or other appurtenances on, over, under, or through viaducts, bridges, or other structures within any portion of State highway rights-of-way or property under the jurisdiction of the Department.
7. Pedestrian overpass or underpass, which are for permission to construct a structure to enable pedestrians or animals to cross over or under a State highway or property under the jurisdiction of the Department. The applicant shall own the property on both sides of the highway.
8. Grading, which are for excavating, filling, or otherwise changing the grade within any portion of State highway rights-of-way or property under the jurisdiction of the Department, but outside paved areas.
9. Guiderail, which are for the removal, installation, or modification of guiderail, pursuant to Section 8 of the New Jersey Department of Transportation Roadway Design Manual. Any person owning property that abuts Department rights-of-way may apply for permission to have guiderail removed within the State highway system or its jurisdictional limits.
10. Test holes or borings, which are for determining utility locations, underground structures, soil logs, and environmental sampling.

11. Monitoring wells, which are for monitoring water levels or contamination.
12. Crosswalks, which are for the installation of distinctly indicated paths for pedestrian crossing by striping or other marking on the highway surface.
13. Telephones, which are for the installation or removal of telephones or booths.
14. Bus shelters or benches, which are for the installation or removal of bus shelters or benches.
15. Banners, decorations, or temporary announcements or guide signs, which are for the installation or removal of banners, decorations, or temporary announcements or guide signs.
16. Parades or gatherings, which are for processions moving along or across, or for assemblages of people on, State highway rights-of-way or property under the jurisdiction of the Department.
17. Temporary use, which is for continuous occupancy for a period of less than one year. Renewal of these permits is at the discretion of the Department. Anticipated occupancy of State highway rights-of-way or property under the jurisdiction of the Department for greater than one year may require the execution of a lease through the Department's Office of Right-of-Way.
18. Detours off State highways or vice versa, which are for rerouting State highway traffic onto a street that is not a State highway or vice versa for a specific limited period of time. The permittee should plan and conduct the activity creating the detour in such a manner that maintains the movement of vehicular traffic in a safe and efficient manner.
19. Lane or shoulder closings on State highways, which are for restricting the available pavement widths or altering the normal traffic patterns.
20. Automatic traffic counting procedures, which includes any and all activities associated with the installation and removal after a prescribed period of time, of temporary automatic traffic counting equipment.
21. Wireless communications site surveys, which are for an annual permit for a carrier to assess the suitability of potential sites for a wireless communications facility. The permit will authorize testing the site for clear transmission and constructability. The permit, for all sites by a carrier, can include other activities including, but not limited to, test holes or borings, landscaping, tree trimming, vegetation control, or unclassified landscaping, monitoring wells, lane or shoulder closings or temporary use.
22. Railroad grade crossings, which are for the removal, modification, repair, installation, or maintenance of an at-grade railroad across or along a State highway.
23. Miscellaneous, which are for activities within any portion of State highway rights-of-way or property under the jurisdiction of the Department that are not covered in this chapter or other State highway rules including, but not limited to, filming of movies or television programming.

#### 16:41-5.3 Concurrent applications

(a) When the Department receives an application that may affect the same section of State highway right-of-way or property under the jurisdiction of the Department as another application for which a permit has not yet been issued, the Department shall coordinate the review of both applications and resolve conflicts, if any. The Department shall apportion

responsibility for the activities between the two applicants based on measures the Department shall establish relating to the timing and location of the activities.

(b) When the Department receives an application for the longitudinal installation of underground fiber optic facilities that affects the same section of State highway as another application for the longitudinal installation of underground fiber optic facilities for which a permit has not yet been issued, the Department shall require that the facilities of these applicants occupy the same trench and to be installed under one construction contract.

#### 16:41-5.4 Review time for applications

(a) The Department shall process a completeness check of an application within 45 days of the Department's receipt thereof, in accordance with N.J.A.C. 16:41-5.6(a). Upon the Department's determination that an application is complete, the Department shall have a maximum application review time of 45 days within which to approve or deny the application. This review time shall apply only to the Department and does not include any applicant time or time for Federal Highway Administration reviews of activity on Interstate highways, interchanges, or ramps. The Department may extend this review time for permits for longitudinal installations of private facilities over 660 feet long and for the longitudinal installations of underground fiber optic facilities over 1,320 feet long.

(b) The Department's application review time for a particular application may be extended upon the written consent of the applicant.

(c) Whenever the Department requests supplemental information from the applicant, the step in the process and its associated time frame shall restart once the Department receives the information. When an applicant fails to respond to a Department request for supplemental information within 90 days of the request, the Department shall consider the application to have been withdrawn.

#### 16:41-5.5 Application process

(a) The Regional Maintenance Office shall determine if an application is complete, based on whether an application meets the criteria for the type of application applied for, including whether the appropriate application fee and all of the items listed in N.J.A.C. 16:41-5.7 have been submitted. If the application is not complete, the Regional Maintenance Office shall send written notice to the applicant that shall contain a request for specific additional information.

(b) If the Department approves the application, the Regional Maintenance Office shall send a proposed permit to the applicant. If the Department denies the application, the Regional Maintenance Office shall send the applicant a denial letter that shall state the reasons for the denial and that shall refer to the design standards that support the denial.

(c) If the applicant changes any aspect of the application in response to Department comments or in response to a statement of reasons for denial, the Department shall not require a new application and fee. If the applicant unilaterally changes any aspect of the application, the Department shall require a new application and fee.

#### 16:41-5.6 Application checklist

(a) Applicants shall submit, with the appropriate application form specified in N.J.A.C. 16:41-5.1(a), the application fee and four copies of a detailed sketch or plan to the following scale: one inch equals 30 feet or one inch equals 50 feet. The Department may require additional copies of the plans, depending on the nature and complexity of the particular application.

1. Plan sheet size shall not exceed 24 inches by 36 inches.
2. Each plan sheet shall include a title block. The title block shall be located in the lower right corner of each plan sheet and shall include the municipality, county, date, name of the applicant, and the type and the limits of the proposed activity.
3. Each plan shall show the State highway rights-of-way lines.
4. The plans shall cover all areas where activity is proposed, and shall show pertinent existing highway and topographic features, and all proposed activities, including installations, removals, and modifications, in a manner that shall be readily distinguishable from existing features.
5. Either the applicant or Department shall place an approval block on the key sheet or, if there is no key sheet, on every plan sheet submitted with the application. The approval block shall contain the following statement:

The Department of Transportation, pursuant to the Tort Claims Act, N.J.S.A. 59:1-1 et seq., and in particular N.J.S.A. 59:4-6, hereby approves this plan and in particular the location and design of the fixtures, improvements or structures that are depicted on this plan within State highway right-of-way as proposed features which shall each constitute "approved features" of the "highway design." The Department further authorizes the placement, improvement, or construction of same within State highway right-of-way in the manner depicted on this plan. The placement, repair and maintenance of the fixtures, improvements or structures depicted on this plan within State highway right-of-way as proposed features shall remain the responsibility of the permittee and are not assumed by the Department, except as otherwise indicated on this plan.

DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_

(b) The applicant shall submit the following information with the application in the manner of submission identified below, with respect to each of the following types of permits:

Type of Permit	Information to be provided	Manner of submission		
		Application Form	Plans	As Attachment
Utility openings	Approved utility waiver			X
	Evidence of membership in One-Call Damage Prevention System			X
	Evidence of public utility status by Board of Public Utilities			X
	Traffic control plan		X	
Poles	Traffic control plan		X	
Curb, sidewalk or handicapped ramps	Traffic control plan		X	
	Block and lot, except for local authority applications	X		
Drainage facilities	Traffic control plan		X	
	Block and lot, except for local authority applications	X		
	Drainage calculations			X

Type of Permit	Information to be provided	Manner of submission		
		Application Form	Plans	As Attachment
Landscaping, tree trimming, vegetation control, or unclassified landscaping	Traffic control plan		X	
	Block and lot, except for local authority applications	X		
Bridge attachments	Traffic control plan		X	
	Structural calculations			X
Pedestrian overpass or underpass	Traffic control plan		X	
	Block and lot, except for local authority applications	X		
	Foundation report			X
	Structural calculations			X
Grading	Traffic control plan		X	
	Block and lot, except for local authority applications	X		
	Contours or cross sections		X	
	Evidence of Soil Conservation District approval, if more than 5,000 square feet will be disturbed			X
Guiderail	Traffic control plan		X	
	Guiderail calculations based on NJDOT Roadway Design Manual			X
	Block and lot, except for local authority applications	X		
Test holes or borings	Traffic control plan		X	
	Locations and depths of proposed test holes or borings		X	
	Block and lot, except for local authority applications	X		
Monitoring wells	Traffic control plan		X	
	Locations and depths of proposed wells		X	
	Block and lot, except for local authority applications	X		
Crosswalks	Traffic control plan		X	
	Striping plan		X	
Telephones	Traffic control plan		X	

Type of Permit	Information to be provided	Manner of submission		
		Application Form	Plans	As Attachment
Bus shelters or benches	Traffic control plan		X	
	Resolution or certification for maintenance, if maintenance is by other than the applicant			X
	Locations of bus shelters or benches		X	
	Details of bus shelters or benches		X	
	Traffic Order			X
Banners, decorations, or temporary announcements or guide signs	Traffic control plan		X	
	Documentation of local authority endorsement			X
Parades or gatherings	State highway traffic control or detour plan		X	
	Documentation of local authority endorsement			X
	Local law enforcement commitment for traffic control			X
	Parade route		X	
Temporary use	Traffic control plan		X	
	Documentation of local authority endorsement, if the land is beyond the typical right(s)-of-way for the particular highway segment			X
	Block and lot, except for local authority applications	X		
Detours off State highways or vice versa	Traffic control plan		X	
	Documentation of local authority endorsement if the detour is off State highway right(s)-of-way in accordance with N.J.S.A. 27:3-1			X
	Detour route		X	
Lane or shoulder closings on State highways	Traffic control plan		X	
	Striping plan		X	
	Pavement box section for shoulder when traffic will use the shoulder		X	

Type of Permit	Information to be provided	Manner of submission		
		Application Form	Plans	As Attachment
Automatic traffic counting procedures	Striping plan		X	
	Equipment placement		X	
Wireless communications site surveys	Traffic control plan		X	
	Location of test holes or borings		X	
	Locations and depths of proposed wells		X	
Railroad grade crossings	Traffic control plan		X	
	Profiles of rails and pavement		X	
	Detour route		X	
Miscellaneous	Supporting documentation as required by the Department			X

(c) If the applicant proposes to interrupt the flow of traffic or to restrict the available pavement width at any time, the proposed hours and days of the activity and any holiday activity shall be included in the traffic control plan. A temporary traffic control plan for each stage of construction may be required, at the discretion of the Department.

(d) Prior to submitting any application for any activity within the Pinelands area, the Highlands Region or the Meadowlands District, the applicant shall give required notice to the Pinelands Commission, the Highlands Council or the Meadowlands Commission, as appropriate, pursuant to applicable law. The application submitted to the Department shall indicate that the applicant has complied with any notice requirements.

(e) If the applicant proposes to disturb more than 5,000 square feet of the surface area of land, documentation of compliance with the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., as amended and supplemented, and N.J.A.C. 2:90, as amended and supplemented, shall be included with the application.

(f) If the applicant proposes an activity within an Agricultural Development Area, as defined in N.J.A.C. 2:76-1.2, as amended and supplemented, documentation of compliance with N.J.A.C. 2:76, as amended and supplemented, shall be included with the application.

16:41-5.7 (Reserved)

## SUBCHAPTER 6. PERMIT ISSUANCE AND CONDITIONS

### 16:41-6.1 Permit issuance process

(a) If the application is approved, the Regional Maintenance Office shall issue proposed permits authorizing activity on State highway rights-of-way or property under the jurisdiction of the Department. The approval of an application does not give the permittee the right to construct, maintain, repair, and use the specified features within State highway rights-of-way

or property under the jurisdiction of the Department. The proposed permit shall be signed by the entity listed in the following table. The signature shall indicate the signatory's acceptance of the terms and conditions of the proposed permit. If the applicant does not return the signed proposed permit and the permit fee to the Regional Maintenance Office within 30 days of the Department's transmittal to the applicant, the Department shall consider the application to have been withdrawn. If the applicant returns the permit fee and the proposed permit signed by the applicable signatory as indicated in the table below to the Regional Maintenance Office within 30 days of the Department's transmittal, then the Department shall execute the permit within 10 days of its receipt by the Department. When the permit is fully executed by both the Department and the applicant, the permittee has the right to construct, maintain, repair, and use the specified features within State highway rights-of-way or property under the jurisdiction of the Department under the terms and conditions of the permit, except that a utility opening permit does not authorize repair.

<u>Type of permit application</u>	<u>Proposed permit signed by:</u>
Utility openings	Utility*
Poles	Utility
Curb, sidewalk or handicapped ramps	Applicant
Drainage facilities	Applicant
Landscaping, tree trimming, vegetation control, or unclassified landscaping	Applicant
Bridge attachments	Applicant
Pedestrian overpass or underpass	Applicant
Grading	Applicant
Guiderail	Applicant
Test holes or borings	Applicant
Monitoring wells	Applicant
Crosswalks	Local governing body
Telephones	Applicant
Bus shelters or benches	Registered motor carrier or local governing body
Banners, decorations, or temporary announcements or guide signs	Applicant
Parades or gatherings	Local governing body
Temporary use	Applicant
Detours off State highways or vice versa	Local governing body
Lane or shoulder closings on State highways	Applicant
Automatic traffic counting procedures	Applicant
Wireless communications site surveys	Carrier
Railroad grade crossings	Railroad or its designated contractor
Miscellaneous	Applicant

\*For longitudinal underground fiber optic installations, a public utility shall sign the proposed permit.

(b) Only the permanent owner and operator of a utility facility shall be eligible to receive a utility permit from the Department. The Department shall not issue utility permits to the party, company, or contractor performing the installation or construction work, and shall not issue utility permits to the temporary agent or engineer handling preparation of the permit application for the permanent owner.

(c) If the signatory is signing other than in an individual capacity, the applicant shall submit with the signed proposed permit an appropriate resolution authorizing the individual to sign on behalf of the permittee.

(d) Under unusual or emergency conditions, the Regional Maintenance Engineer may issue oral approvals for activity to be covered by a subsequently issued permit (see N.J.A.C. 16:41-1.2(a) for appropriate telephone numbers). Unusual or emergency conditions shall exist when, in the determination of the Regional Maintenance Engineer, issuance of the oral approval is necessary to protect against an imminent threat to public health, safety, welfare, life, limb, or property. If the Regional Maintenance Engineer grants oral approval, the applicant shall submit an application as outlined in this chapter within five business days of the date the Regional Maintenance Engineer grants the oral approval.

#### 16:41-6.2 Permit conditions for all highway occupancy permits

(a) The permittee shall complete the activity according to the terms and conditions of the permit.

(b) The permittee shall ensure that a copy of the permit is available for review at the activity site.

(c) The conditions of the permit are binding upon all successors in interest.

(d) The Department may impose those site-specific terms and conditions it deems necessary, convenient or desirable when issuing permits.

(e) Every permit shall begin upon the date of permit execution and shall contain an expiration date, as set forth below:

<u>Type of Permit</u>	<u>Permit Term in Years</u>
Utility openings	2
Poles	2
Curb, sidewalk or handicapped ramps	1
Drainage facilities	1
Landscaping, tree trimming, vegetation control, or unclassified landscaping	2
Bridge attachments	1
Pedestrian overpass or underpass	1
Grading	1
Guiderail	1
Test holes or borings	1
Monitoring wells	1
Crosswalks	1
Telephones	1
Bus shelters or benches	1
Banners, decorations, or temporary announcements or guide signs	1
Parades or gatherings	1
Temporary use	1
Detours off State highways or vice versa	1
Lane or shoulder closings on State highways	1
Automatic traffic counting procedures	1
Wireless communications site surveys	1
Railroad grade crossings	1
Miscellaneous	See Permit

(f) The permittee shall notify the Regional Maintenance Office at least 72 hours before starting the activity. The permittee shall complete the activity in an expeditious and safe manner. In the preactivity notification, the permittee shall designate an individual available at all times to replace or repair traffic control devices. The permittee shall provide the name and phone number of this individual to the Regional Maintenance Engineer.

(g) At least one week before starting the activity, the permittee shall send a letter specifying the starting date of the activity and a copy of the permit to the municipal clerk in each municipality where the permit authorizes the activity.

(h) All permits shall contain provisions for indemnification of the State, and its employees and officials. Permit forms with these provisions shall be available upon request from the Regional Maintenance Office.

#### 16:41-6.3 Permit conditions for some highway occupancy permits

(a) Permit conditions for some highway occupancy permits are as follows:

Type of Permit	Applicable subsections of N.J.A.C. 16:41-6.3																	
	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q) *	(r) *	(s) *
Utility openings	x		x	x			x	x		x	x							
Poles	x							x			x	x						
Curb, sidewalk or handicapped ramps	x			*	x	x	x			x	x			x				
Drainage facilities	x			*	x	x	x			x	x			x				
Landscaping, tree trimming, vegetation control, or unclassified landscaping	*	x		*			x			x	x							
Bridge attachments						x	x			x	x							
Pedestrian overpass or underpass	x			*	x	x	x			x	x							
Grading	*			*	x	x	x			x	x							
Guiderail	x					x	x			x	x							
Test holes or borings	x		x	*		x	x				x							
Monitoring wells	x		x	*		x	x			x	x					x		
Crosswalks							x			x	x							
Telephones	*						x			x	x							
Bus shelters or benches	*						x			x	x							
Banners, decorations, or temporary announcements or guide signs										x	x							
Parades or gatherings																		
Temporary use	*			*		x	x			x	x	x						
Detours off State highways or vice versa						x	x			x	x		x					

Type of Permit	<u>Applicable subsections of N.J.A.C. 16:41-6.3</u>																	
	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)	(o)	(p)	(q)	(r)	(s)
Lane or shoulder closings on State highways						x	x			x	x							
Automatic traffic counting procedures										x	x							
Wireless communications site surveys						x			x		x							
Railroad grade crossings	x	*	x	x		x	x	*		x	x				*			
Miscellaneous	*			*			*				*							

(b) Requirements for One-Call notification and fiber optic markouts are as follows:

1. The permittee shall supply the confirmation number obtained from the One-Call Damage Prevention System to the Regional Maintenance Office in accordance with N.J.S.A. 48:2-83. The permittee shall provide this confirmation number at least 72 hours before starting the activity.

2. The permittee shall conduct a field evaluation which includes a review of the Department's Intelligent Transportation System inventory database at <http://www.state.nj.us/trs/eng/elec/ITS/requests.shtm> to determine if any fiber optic cable or conduit facilities are within the proposed project limits. Field markouts of these facilities are required and shall be requested a minimum of 10 business days prior to conducting any work activity through the contact information provided at N.J.A.C. 16:41-1.2(c).

(c) Ground cover shall not exceed 12 inches in height at full maturity within the sidewalk area. Plantings shall not interfere with sight distance.

(d) The permittee shall provide the Regional Maintenance Office with copies of any other agency approvals required for activity within ultimate, proposed Department rights-of-way or property under the jurisdiction of the Department.

(e) The Department may require security in the form of a bond, check, or money order in an amount sufficient to guarantee or insure restoration of the area disturbed by the permittee, depending upon the extent of the activity and the Department's past experience with the applicant or permittee.

1. If the Department requires security, the permittee shall provide it, in the required form, to the Regional Maintenance Engineer along with the permit fee.

2. If it becomes necessary for the Department to effect repairs because of the failure of the permittee to do so, the Department shall deduct the full cost of the repairs from the amount of the security. If the amount of the security is less than the cost of the repairs performed by the Department or its contractor, the Department shall bill the permittee for the balance due. If the permittee does not pay the full amount due within 30 days of billing, the Department may initiate legal action.

(f) Certain highway occupancy permits are associated with the property and not with the permittee. If the permittee sells the property, the permittee shall provide the purchaser with a copy of the permit. The Department shall not be responsible for advising purchasers of such permits or the conditions contained therein.

(g) If, after issuance of a permit by the Department, a permittee is barred or prevented, directly or indirectly, from proceeding with the activity by a legal action instituted by any State agency, political subdivision, or any other individual or party or by a directive or order issued by any State agency, political subdivision, or court of competent jurisdiction, the period of time prescribed in this chapter for the activity shall be tolled during the pendency of said legal action, directive, or order.

1. The permittee shall notify the Regional Maintenance Office in writing and include its supporting documentation within 30 days of any action that may trigger this provision.

2. If the activity has already commenced, the permittee shall contact the Regional Maintenance Office immediately to ensure that the cessation of activity does not create a hazard.

3. The permittee shall restore any disturbed area at a time and in a manner prescribed by the Department or the Department may do so at the permittee's expense.

4. The remaining activity time shall again begin to run from the date on which the legal directive or order or other legal impediment to continuation of the activity is removed.

5. The permittee shall notify the Regional Maintenance Office in writing within 30 days of the date of removal of the legal impediment to continuation of the activity.

6. The Department reserves the right to reevaluate the permit conditions if the tolling time extends beyond two years from the date the Department executes the permit.

(h) After the permittee completes the activity within State highway rights-of-way or property under the jurisdiction of the Department and meets all conditions of the permit, the permittee shall notify the Regional Maintenance Office, in writing. Within 30 days of its receipt of the notice, or as otherwise specified in the permit, the Regional Maintenance Office shall notify the permittee if any corrective action is required by the permittee.

(i) The following provisions apply to railroad grade crossing permits, except where otherwise noted, and utility opening permits as indicated in the table at (a) above:

1. There shall be no open cut transverse pavement trenches within freeway rights-of-ways. If any additional facilities are required to cross under freeway pavement, the permittee shall use trenchless technology methods from outside the no-access limits of the freeway.

2. When a highway is newly paved, or paved for improvement, the Department shall not permit openings in the highway for a period of five years thereafter, without the consent of the Commissioner, as documented in a waiver pursuant to N.J.S.A. 27:7-26. The Department may extend the period of this restriction indefinitely if the traffic volume on the highway is high.

3. The Department, either in conjunction with its construction projects or in conjunction with projects advanced by others, may modify or revoke a utility opening permit. The Department shall provide an affected utility opening permit holder with at least 30 days notice of the Department's intention to revoke the permit. Any appeal shall be addressed pursuant to N.J.A.C. 16:41-6.12(b). This paragraph does not apply to railroad grade crossings.

4. Work by a permittee cannot begin until pavement has been laid for at least one year. When performing work, the permittee shall restore a trench to meet or exceed existing conditions in accordance with the Department's standard details and standard specifications.

5. The permittee shall restore the surface to a smooth and sound condition that shall meet or exceed pre-existing and surrounding conditions.

6. The permittee shall provide the Department with as-built plans based on the New Jersey Plane Coordinate system with offsets shown from existing physical features. The plans shall record the vertical and horizontal location of the utility facility for each change in grade or alignment at 100 foot intervals. The as-built plans shall also show the horizontal and vertical locations of any manholes or hand holes. The permittee shall submit four prints and one reproducible copy of the as-built plans within one month of completion of construction.

7. The permittee shall construct underground utility facilities that are detectable by standard locating equipment operated on the surface.

8. The minimum lateral proximity to a parallel utility facility, including the State's fiber optic ducts, shall be 18 inches from the edge of utility facility to the edge of utility facility and in accordance with N.J.A.C. 16:25-3.1 and 7.2. As used in this paragraph, utility facilities do not include railroad facilities.

9. The permittee shall construct manholes or hand holes so that the longest dimension is parallel to the roadway and not within the roadway. This does not apply to railroad grade crossings.

10. Except for railroad grade crossings, utility facilities shall not be located longitudinally in the travel lane or in the shoulder unless a waiver has been granted by the Department in accordance with N.J.A.C. 16:25-2.3. On longitudinal installations, utility locations parallel to the pavement at or adjacent to the right-of-way line are preferable to minimize interference with highway drainage, the structural integrity of the traveled way, shoulders, and embankment; and the safe operation of the highway. At a minimum, their lateral location shall be offset a suitable distance beyond the slope, ditch, or curb line, as the Department may stipulate.

(j) The permittee shall notify the Wireless Communications Unit before undertaking any activity for each site covered by the permit at the address indicated in N.J.A.C. 16:41-1.2(b).

(k) The permittee shall be responsible for maintaining the facilities in good repair. Failure to do so shall be a violation of the permit. The permittee shall provide a one-year maintenance bond, the amount of which shall depend upon the value of the activity.

(l) The permittee shall make repairs to facilities that the Department deems necessary to prevent any hazard to the public, interference with traffic, or damage to highway property. Such repairs shall be made as promptly as reasonably possible after the Department notifies the permittee of the need for repairs. A failure to make the designated repairs shall be a violation of the permit.

(m) The permittee shall remove the activity before the expiration of a temporary use permit. The permit shall establish the date for removal. The permit shall also address the restoration of the State highway rights-of-way or property under the jurisdiction of the Department.

(n) The following provisions apply to detours as indicated in the table at (a) above:

1. The permittee shall be responsible for the cost of all maintenance and repairs to the roads over which the traffic diversion takes place;

2. The permittee shall bear the expense of providing and maintaining approved signs, and other safety devices necessary to protect the traveling public throughout the time the detour is in use; and

3. All traffic handling shall be subject to the supervision and control of a representative of the Regional Maintenance Engineer working in cooperation with local police officials, whose expression of ability and willingness to handle traffic proposed to be diverted shall be a permit condition. The Department may require the permittee to retain full-time uniformed traffic directors, depending upon the traffic conditions particular to the activity location and the availability of local police support.

(o) Curb, sidewalk or handicapped ramp permits and drainage facilities permits are subject to the applicable provisions of N.J.A.C. 16:38.

(p) The permittee shall provide any required environmental test reports and results obtained pursuant to the permit to the Department.

(q) Longitudinal installation of overhead lines on the highway rights-of-way shall be limited to single wooden pole type construction. Single wooden pole type construction means that no pole shall be closer than 10 feet to any other pole.

(r) The permittee shall complete pole replacement within 90 days of installation of the new pole, including removal of the pole being replaced.

(s) The following requirements apply to utility opening permits for longitudinal installation of an underground fiber optic facility, as indicated in the table at (a) above:

1. The permittee shall bundle ducts to form one compact facility;

2. The facility shall not occupy over 12 inches in width or 24 inches in depth;

3. The minimum depth of cover of the facility shall be 54 inches. If there is a conflict with an intersecting utility facility at this depth, the permittee shall install the fiber optic facility deeper to go under the other utility. If the other utility extends deeper than 24 inches below the fiber optic facility, the fiber optic facility may go over the other utility and shall be protected with concrete encasement as approved by the Department, but at no location will the encasement be within 24 inches of the surface;

4. There shall be a protective layer over the facility. The applicant shall cover the facility:

i. To within 30 inches of the surface with Permeable Flowable Fill (Controlled Low Strength Material). Orange pigmentation is encouraged, but not required; or

ii. With a cap of poured or pre-cast concrete that is four inches thick and 24 inches wide directly above the fiber optic facility.

5. The permittee shall install a continuous plastic ribbon marking tape on the Permeable Flowable Fill directly above the fiber optic facility or on the trench backfill material directly above the fiber optic facility.

6. Location requirements for utility facilities that longitudinally occupy limited access highways shall be in accordance with N.J.A.C. 16:25-7A.

7. Fiber optic facility installations of one half-mile or longer shall require the permittee to dedicate to the Department the use of one duct (one and one-fourth inch nominal size with associated manholes) for State use. The permittee shall maintain the dedicated duct and associated manholes in good repair. The facilities within the ducts and manholes shall be the responsibility of the State. The permittee shall not begin construction until the Department receives formal documentation from the permittee indicating the permittee's commitment to dedicate the duct use.

8. The permittee shall design and construct the fiber optic facility to avoid future relocations within the limits of all projects listed in the Department's then-existing 10-year

Capital Construction Program. The Department shall waive this requirement if the permittee executes an agreement to absorb all relocation or accommodation costs resulting from the construction of any project listed in the 10-year Statewide Transportation Improvement Program. The permittee shall not undertake construction within the limits of such a project until the permittee and the Department execute a written agreement regarding the payment of future relocation costs.

#### 16:41-6.4 Movement or relocation of highway facilities

(a) When a permit requires the Department's movement or relocation of highway facilities, the Department shall prepare and forward a cost estimate to the applicant. The applicant shall provide a check or money order in the amount of the cost estimate to the Regional Maintenance Office along with the permit fee. The Department shall not execute the permit until the applicant has provided the check or money order.

(b) When the Department has completed the movement or relocation, the Department shall deduct the full cost of the activity from the amount of the check or money order. If the amount of the check or money order is less than the cost of the activity performed by the Department, the Department shall bill the permittee for the balance due. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action. If the amount of the check or money order is more than the cost of the activity performed by the Department, the Department shall refund the difference.

#### 16:41-6.5 Bonds

Permittees who own facilities within Department rights-of-way requiring numerous permits over an extended period of time may execute a single bond for restoration and maintenance required by multiple highway occupancy permits in lieu of multiple bonds for each permit as required by N.J.A.C. 16:41-6.3(e) and (k).

#### 16:41-6.6 Agreements

(a) The Department may require the execution of an agreement as a condition of a permit, when the Department, in its sole discretion, determines that this condition is necessary, convenient, or desirable.

(b) The Regional Maintenance Office shall notify the applicant of such a determination. When the Regional Maintenance Office issues the permit, execution of the agreement shall be one of the conditions. The permit applicant shall perform no activity within Department rights-of-way or property under the jurisdiction of the Department before the execution of the agreement. If the applicant does not respond to the Department's correspondence regarding the agreement within 90 days of the correspondence, the permit application shall be deemed withdrawn.

(c) Agreements may include, but shall not be limited to:

1. An agreement for administrative and inspection costs during construction, an estimate of which is provided by the Department to the permittee. Pursuant to the terms of the agreement, the permittee shall be responsible for payment of all Department costs incurred for these activities, even if the costs exceed the estimate; or

2. A maintenance agreement for activities resulting in the installation or modification of permanent facilities within the Department's right-of-way.

#### 16:41-6.7 Permit expiration

In addition to expiring at the conclusion of the fixed time periods set forth in N.J.A.C. 16:41-6.2(f), a permit may expire pursuant to N.J.A.C. 16:41-6.8.

#### 16:41-6.8. Permit violations

(a) When the Department becomes aware that a permit condition has been violated, it shall notify the permittee, in writing, that the permittee has 30 days within which to remedy the violation.

1. Failure to remedy the violation within the specified time limit shall cause expiration of the permit.

2. The Department shall provide written notice of the effective date of the expiration and may seek the civil penalties provided for in N.J.S.A. 27:7-44.1 or other available remedies.

3. The penalties shall commence on the day following the date of expiration.

4. The Department may remedy the violation and shall deduct the full cost of such work from the amount of any bond, check, or money order held by the Department.

5. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

6. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(b) When the Department determines that an emergent situation exists that results from a permit condition violation, the Department shall notify the permittee.

1. The permittee shall make emergency repairs within 24 hours, or as otherwise directed by the Department.

2. If the permittee fails to make the designated repairs within the specified time limit, the permit shall expire and the Department may either remedy the violation or terminate the activity and shall deduct the full cost of any work done from the amount of any bond, check or money order held by the Department.

3. If the amount of the guarantee is less than the cost of the repairs performed for the Department, the Department shall bill the permittee for the balance due.

4. If the permittee does not pay the balance due within 30 days of billing, the Department may initiate legal action.

(c) If the permittee disagrees with the Department's determination that a violation exists, the permittee may appeal pursuant to N.J.A.C. 16:41-6.12.

#### 16:41-6.9 Permit revocations or modifications

The Department may revoke or modify any permit after the Commissioner determines that the conditions that existed at the time the Department executed the permit have changed.

#### 16:41-6.10 Permit extensions

(a) If a permittee starts activity authorized by a permit within the permit time established at N.J.A.C. 16:41-6.2(f), but cannot complete the activity within the allotted time, the permittee shall request an extension of time in writing from the appropriate Regional Maintenance Office and shall submit the required extension fee identified at N.J.A.C. 16:41-7.1 in the form of a check or money order. The Department may approve a single, one-year extension. "Temporary Use" permits may be extended at the discretion of the Department pursuant to N.J.A.C. 16:41-5.2(a).

(b) Permits for monitoring wells may be extended more than once, when required by the Department of Environmental Protection.

#### 16:41-6.11 Acceptance of permit

The start or performance of any activity under a permit shall constitute full understanding and acceptance of, and agreement with, the terms and conditions of the permit and shall represent the express intention and obligation of the permittee to comply therewith.

#### 16:41-6.12 Appeal process

(a) The appeal process for highway occupancy applications and permits, except for utility opening applications and permits and wireless communications site survey applications and permits, is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting will provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Executive Director for Regional Operations within 15 days.

4. The Executive Director for Regional Operations shall schedule an informal hearing within 10 days of receipt of the appeal. The Executive Director for Regional Operations shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Executive Director for Regional Operations shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Executive Director for Regional Operations shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

(b) The appeal process for utility opening applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Regional Maintenance Engineer within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Regional Maintenance Engineer shall schedule a meeting with the appellant that shall take place within 30 days thereafter and will provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Regional Maintenance Engineer shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Regional Maintenance Engineer, the appellant may submit a further appeal to the Director of Capital Program Support within 15 days.

4. The Director of Capital Program Support shall schedule an informal hearing within 10 days of receipt of the appeal. The Director of Capital Program Support shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the Director of Capital Program Support shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The Director of Capital Program Support shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

(c) The appeal process for wireless communications site survey applications and permits is as follows:

1. The applicant or permittee shall submit a written request for reconsideration to the Supervisor of the Wireless Communications Unit within 30 days of a notice from the Department. The request shall include reasons for the appeal.

2. Within 10 days of receipt of the reconsideration request, the Supervisor of the Wireless Communications Unit shall schedule a meeting with the appellant that shall take place within 30 days thereafter. The meeting shall provide the appellant with an opportunity to present additional information in furtherance of the appeal.

3. The Supervisor of the Wireless Communications Unit shall render a decision in writing within 15 days of the meeting and shall so notify the appellant. If the appellant does not agree with the decision of the Supervisor of the Wireless Communications Unit, the appellant may submit a further appeal to the manager of the office administering major highway access permits within 15 days.

4. The manager of the office administering major highway access permits shall schedule an informal hearing within 10 days of receipt of the appeal and shall conduct the hearing. At the hearing, the appellant shall have an opportunity to present additional information.

5. In reaching the final agency decision, the manager of the office administering major highway access permits shall consider all of the information previously provided and the additional information presented at the hearing, as well as the criteria set forth in these rules and the public's right and interest in a safe and efficient highway system. The manager of the office administering major highway access permits shall render the final agency decision, with reasons, within 10 days of the informal hearing and shall so notify the appellant in writing.

## SUBCHAPTER 7. FEES

### 16:41-7.1 Fees

(a) When an applicant proposes to undertake multiple activities that are associated with different types of permits, the fee associated with the highest cost permit shall be applicable.

(b) Anyone under contract to the Department and working on Department rights-of-way or on property under the jurisdiction of the Department at the written request of the Department shall not be assessed an application or permit fee for any required permit.

(c) Fees for applications, permits, and renewals are set forth below and are non-refundable. Fees shall be in the form of a check or money order made payable to the Department. The Department shall not accept cash. The applicant shall submit the application fee with the application. The applicant shall not submit the permit fee until the applicant returns the signed proposed permit to the Regional Maintenance Office. The Department shall not execute a proposed permit until the applicant has submitted the proper fee for the permit and the applicable entity identified at N.J.A.C. 16:41-6.1 has signed the proposed permit.

<u>Type</u>	<u>Number</u>	<u>Unit</u>	<u>Application</u>	<u>Permit</u>	<u>Extension</u>
Utility openings	0 to 20	Square	\$400.00	\$150.00	\$150.00
		Feet (SF)			
	20 to 200	SF	\$600.00	\$200.00	\$200.00
	Greater than 200	SF	\$900.00	\$300.00	\$300.00
Poles	1 to 10	Unit	\$250.00	\$75.00	\$75.00
	Greater than 10	Unit	\$475.00	\$150.00	\$150.00
Curb, sidewalk or handicapped ramps	0 to 200	Linear Feet (LF)	\$300.00	\$100.00	\$100.00
	Greater than 200	LF	\$600.00	\$200.00	\$200.00
Drainage facilities	1 to 5	Unit	\$175.00	\$50.00	\$50.00
	Greater than 5	Unit	\$400.00	\$150.00	\$150.00
	0 to 200	SF	\$175.00	\$50.00	\$50.00
	Greater than 200	SF	\$400.00	\$150.00	\$150.00
Landscaping, tree trimming, vegetation control, or unclassified landscaping		Unit	\$300.00	\$100.00	\$100.00
Bridge attachments	0 to 100	LF	\$300.00	\$100.00	\$100.00
	Greater than 100	LF	\$600.00	\$200.00	\$200.00

<u>Type</u>	<u>Number</u>	<u>Units</u>	<u>Application</u>	Permit	<u>Extension</u>
Pedestrian overpass or underpass	1	Unit	\$600.00	\$200.00	\$200.00
Grading		Unit	\$250.00	\$75.00	\$75.00
Guiderail	0 to 200	LF	\$300.00	\$100.00	\$100.00
	Greater than 200	LF	\$600.00	\$200.00	\$200.00
Test holes or borings	1 to 5	Unit	\$175.00	\$50.00	\$50.00
	Greater than 5	Unit	\$350.00	\$125.00	\$125.00
Monitoring wells	1 to 5	Unit	\$175.00	\$50.00	\$50.00
	Greater than 5	Unit	\$350.00	\$125.00	\$125.00
Crosswalks	1 to 4	Unit	\$175.00	\$50.00	\$50.00
	Greater than 4	Unit	\$350.00	\$125.00	\$125.00
Telephones		Unit	\$250.00	\$75.00	\$75.00
Bus shelters or benches		Unit	\$300.00	\$100.00	\$100.00
Banners, decorations, or temporary announcements or guide signs	1 to 5	Unit	\$125.00	\$25.00	\$25.00
	Greater than 5	Unit	\$175.00	\$50.00	\$50.00
Parades or gatherings		Unit	\$125.00	\$25.00	\$25.00
Temporary use			\$350.00	\$125.00	\$125.00
Detours off State highways or vice versa		Unit	\$300.00	\$100.00	\$100.00
Lane or shoulder closings on State highways		Unit	\$175.00	\$50.00	\$50.00
Automatic traffic counting procedure		Unit	\$50.00	\$25.00	\$25.00
Wireless communications site surveys	Annual	Unit	\$600.00	\$200.00	\$200.00
Railroad grade crossings		Unit	\$400.00	\$150.00	\$150.00
Miscellaneous		Unit	\$300.00	\$100.00	\$100.00

## SUBCHAPTER 8. WAIVERS

### 16:41-8.1 Waivers

(a) The Department shall not grant waivers or other relief from design standards or other provisions of this chapter unless the waiver can be granted without substantial detriment to the safety and operation of the highway and without substantially impairing the intent and purpose of this chapter. Only the Commissioner, not a designee, may grant waivers from fees, but appropriate Department staff shall have authority to waive application requirements or other requirements for applicants.

(b) If an applicant wishes to seek a waiver, the applicant shall submit a completed Department form MT-159, Request for Waiver, as an attachment to the permit application. Form MT-159 is available from the Department's Regional Maintenance Offices or the Department's website at: [www.state.nj.us/transportation/business/accessmgt/](http://www.state.nj.us/transportation/business/accessmgt/). The request for waiver shall state reasons why a waiver is appropriate and include documentation to support the waiver.

(c) If a waiver is granted, the Department shall incorporate the waiver approval and any associated conditions into the proposed permit.

(d) Possible bases for waiver requests include, but are not limited to:

1. Existing substandard conditions;
2. Existing social, economic or environmental constraints;
3. Unique character of the area;
4. Unreasonableness of strict application of the requirements of this chapter under particular circumstances;
5. Conflict between the requirements of this chapter and the requirements of:
  - i. The Pinelands Commission or the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.;
  - ii. CAFRA;
  - iii. The Freshwater Wetlands Act, N.J.S.A. 13:9B-1 et seq.;
  - iv. The Stream Encroachment Act, N.J.S.A. 58:16A-50 et seq.;
  - v. The Federal Flood Hazard Zone Regulations;
  - vi. The Delaware River Basin Commission;
  - vii. The Delaware and Raritan Canal Commission;
  - viii. The New Jersey Meadowlands Commission;
  - ix. The Highlands Water Protection and Planning Council or the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.;
  - x. The Board of Public Utilities;
  - xi. Utility industry standards;
  - xii. The Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., and N.J.A.C. 2:90, as amended and supplemented; and
  - xiii. The State Agriculture Development Committee, N.J.A.C. 2:76; and

6. Municipal, county or other approving agency imposition of conditions beyond the control of the applicant. If this occurs during the Department application process and the applicant provides documentation of these conditions, the Department shall not require a new application and fees as specified in N.J.A.C. 16:41-7.

(e) The grant of a waiver of a particular standard or requirement shall apply only to the specific location requested. It shall not constitute an approval of an application.

## Appendix

